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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/711,404

09/16/2004

Alexander Schweizer

LUKP:119US

5403

24041 7590 08/29/2008  
SIMPSON & SIMPSON, PLLC  
5555 MAIN STREET  
WILLIAMSVILLE, NY 14221-5406

EXAMINER

TRAN, DALENA

ART UNIT

PAPER NUMBER

3664

MAIL DATE

DELIVERY MODE

08/29/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/711,404	SCHWEIZER ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Dalena Tran	3664	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 16 June 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 21-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/9/07</u> .  | 6) <input type="checkbox"/> Other: _____                          |

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10711404	9/16/04	SCHWEIZER ET AL.	LUKP:119US

SIMPSON & SIMPSON, PLLC  
5555 MAIN STREET  
WILLIAMSVILLE, NY 14221-5406

**EXAMINER**

Dalena Tran

ART UNIT	PAPER
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3664	20080828
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DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner for Patents**

Art Unit: 3664

## **DETAILED ACTION**

### **Notice to Applicant(s)**

1. This office action is responsive to the elected response on 6/16/08. The elected of group I, claims 1-5, and 21-23 has been considered. Claims 6-20 should be cancelled. Claims 1-5, and 21-23 are pending.

The prior art submitted on 3/9/07 has been considered.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1, lines 6, and 14, it does not clear what applicant means “that is to say” in the sentences.

As per claim 23, line 11 of page 9, “the regulatory function of the idle controller are”, this does not clear to understand what the idle controller doing in the sentence of claim. Also, in lines 11-14, “the regulatory function of the idle controller are such that at least in case of a selectable gear ratio and if the drivetrain is engaged, the engine torque could be raised to a value that is such that in case of this gear ratio”, this is not understand what that applicant want to claim in claim 23.

Art Unit: 3664

Also, all the claims (1-5, and 21-23), the sentences was not separated each other by a paragraphs, a sections, or periods, this make the claims is not clearly. The claims need to be modified for easily to understand.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-5, and 21-23, are rejected under 35 U.S.C.103(a) as being unpatentable over Yamaguchi (5052246) in view of Yamaguchi (5216938).

As per claims 1, and 2, Yamaguchi ('246) discloses a method for controlling a motor vehicle drivetrain system, which motor vehicle drivetrain system has a drivetrain (122) as well as a combustion engine (124) for the purpose of driving this drivetrain (122) and which motor vehicle drivetrain system, furthermore, has an electronic engine control unit (132) that controls the combustion engine (124) as well as an electronic transmission control unit (110) for the purpose of controlling at least one device arranged in the drivetrain, that is to say, torque transmission device (114, 116) and/or gearbox device (102, 106) where the electronic engine control unit (132) has a signal output upon which adjoins a signal transmission link and where the electronic engine control unit (132) via this signal output and this signal transmission link (see column 3, lines 39-67), at least when the electronic engine control unit (132) as well as the signal transmission link is functioning properly, will transmit signals in operation, which signals can be acquired by the electronic engine control unit (see the abstract), characterized in that the

Art Unit: 3664

electronic engine control unit (132) on the basis of the signals actually controlled by the electronic engine control unit (132) will determine whether there is a functional impairment in the unit from the device arranged in the drivetrain, that is to say, the torque transmission device (114, 116) and/or gearbox device (102, 106), the electronic transmission control unit (110) and the signal transmission link (see column 4, lines 1-68). Yamaguchi ('246) does not disclose the electronic engine control unit (132) limits the maximum permissible engine torque of the combustion engine when it has determined a functional impairment. However, Yamaguchi ('938) disclose the electronic engine control unit (132) limits the maximum permissible engine torque of the combustion engine when it has determined a functional impairment (see the abstract; columns 7-8, lines 35-42; columns 9-11, lines 65-18; columns 12-13, lines 54-47; columns 14-15, lines 46-39; and columns 16-17, lines 6-52). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teach of Yamaguchi ('246) by combining the electronic engine control unit limits the maximum permissible engine torque of the combustion engine when it has determined a functional impairment for controlling vehicle output torque with fail safe condition.

As per claim 3, Yamaguchi ('246) discloses a method for controlling a motor vehicle drivetrain system, which motor vehicle drivetrain system has a gearbox device (102, 106) arranged in a drivetrain (122) and/or at least one torque transmission device (114) arranged in drivetrain (122) where the motor vehicle drivetrain system furthermore has a combustion engine (124) for the purpose of driving the drivetrain (122) as well as an electronic engine control unit (132) that controls the combustion engine (124) and an electronic transmission control unit (110) for the purpose of controlling the gearbox device (102, 106) and/or at least one torque

Art Unit: 3664

transmission device (see columns 1-2, lines 36-23), characterized in that one determines whether between the electronic transmission control unit (110) and the electronic engine control unit (132) there is a data or signal communication or there is a functioning data or signal communication and/or where one determines whether the electronic transmission control unit (110) is indeed functionally impaired and/or where one determines whether the gearbox device (102, 106) and/or the torque transmission device (114) is functionally impaired (see column 2, lines 25-64; and columns 2-3, lines 66-38; and column 4, lines 1-68); where the combustion engine (124) is turned off when it is determined that there is no data or signal communication and/or that there is a functionally impaired data or signal communication between the electronic transmission control unit (110) and the electronic engine control unit (132) and/or the combustion engine (124) is turned off when it is determined that the electronic transmission control unit (110) is functionally impaired and/or the combustion engine (124) is turned off when it is determined that there is a functional impairment in the gearbox device (102, 106) and/or in the torque transmission device (see columns 5-6, lines 21-28; and columns 6-7, lines 30-45).

Yamaguchi ('246) does not disclose vehicle speed is less than a predetermined speed limit. However, Yamaguchi ('938) disclose when in each case it is additionally ascertained that the brake (140) of motor vehicle (100) is actuated and/or when it is additionally ascertained in each case that the vehicle speed is less than a predetermined speed limit and/or when it is additionally ascertained that the engine speed is less than a predetermined boundary and/or when it is additionally ascertained that the idle controller torque is greater than a predetermined boundary value and/or when it is additionally ascertained that a selection lever that can be actuated by the driver is neither in the park position nor in the neutral position (see columns 7-8, lines 35-41;

Art Unit: 3664

columns 11-12, lines 19-53; and columns 13-14, lines 48-45). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teach of Yamaguchi ('246) by combining vehicle speed is less than a predetermined speed limit for controlling vehicle engine output.

As per claims 4-5, Yamaguchi ('938) disclose whether there is a data or signal communication or a functioning data or signal communication between the electronic transmission control unit (110) and the electronic engine control unit (132) and/or where one determines by means of the electronic engine control unit (132) whether the electronic transmission control unit (110) is functionally impaired and/or where one determines by means of electronic engine control unit whether the gearbox device (102, 106) and/or the torque transmission device (114) are functionally impaired and/or where the maximum permissible engine torque is limited by means of the electronic engine control unit (132) and/or where the combustion engine (124) is turned off by means of the electronic engine control unit (see columns 5-6, lines 23-49; columns 9-11, lines 65-18; columns 12-13, lines 54-47; columns 14-15, lines 46-39; and columns 16-17, lines 6-52).

As per claims 21-22, Yamaguchi ('246) disclose a safety system for a motor vehicle (100), where this safety system can receive, transmit and process electronic signals and has a memory device (136) in which there is stored at least one control program (138) that controls a method according to Claim 1, the safety system (134) comprises an electronic engine control unit (132) and that this electronic engine control unit (132) can receive, transmit and process electronic signals and has the memory device (136) in which there is stored at least the control program (138) that controls said method (see columns 6-7, lines 30-46).



As per claim 23, Yamaguchi ('938) disclose a motor vehicle with a drivetrain system, which drivetrain system has a drivetrain (122) that at the driving end is coupled with a combustion engine (124) and when in operation is loaded by it and that on the power output side is coupled with wheels (126, 128) of the motor vehicle (100) so that these wheels (126,128) can be driven by means of combustion engine (124), whereby in this drivetrain (122) there is arranged a transmission (102) that can be actuated by means of a gearbox actuation device (106) by means of which one can alter the gear ratio given in the drivetrain (122) between the combustion engine (124) and the drivable wheels (126, 128), whereby a brake (140) is provided for the purpose of braking the motor vehicle (see columns 7-8, lines 35-41), where, furthermore, at least there is in the drivetrain (122) a starting clutch (114) that can be actuated by means of a clutch actuation device (116) and where the drivetrain system has an electronic engine control unit (132) for the purpose of controlling the combustion engine (124) as well as an electronic transmission control unit (110) to control the gearbox device (102, 106) or a gearbox actuation device (106) and/or the starting clutch (114) or clutch actuation device (see columns 9-11, lines 65-18; columns 13-14, lines 48-45; and columns 17-18, lines 53-35), where there is furthermore provided an idle controller that controls the combustion engine (124) or a fuel calculation member in operation in such a way that the engine torque will be increased when the engine speed falls below the idle speed in order to raise the engine speed to or above that idle speed (see columns 12-13, lines 54-47), and where the engine output as well as the selectable gear ratios of the drivetrain (122) and the regulatory function of the idle controller are such that at least in case of a selectable gear ratio and if the drivetrain (122) is engaged, the engine torque could be raised to a value that is such that in case of this gear ratio, the braking torque of the

Art Unit: 3664

brake (140) would not suffice to bring about a deceleration of the device (100), whereby, furthermore, there is provided a safety system (134) according to Claim 21, which ensures that this motor vehicle (100) can be braked by means of this brake (140) with the drivetrain (122) engaged and with each gear ratio that can be selected in this drivetrain (see columns 14-15, lines 46-39; and columns 16-17, lines 6-52).

### **Conclusion**

5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

. Tashiro (7115067)

. Langer et al. (6357419)

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dalena Tran whose telephone number is 571-272-6968. The examiner can normally be reached on M-W (in a first week of a bi-week), and T-R (in a second week of bi-week) from 7:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi H. Tran can be reached on 571-272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dalena Tran/

Primary Examiner, Art Unit 3664

August 28, 2008

Application/Control Number: 10/711,404

Page 9

Art Unit: 3664